Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Implementation of Section 621(a) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992	MB Docket No. 05 - 311

COMMENTS OF CLAYTON J. LEANDER ON BEHALF OF DIABLO VIDEO ARTS

INTRODUCTIONS:

Mr. Clayton John Leander, director of Diablo Video Arts (DVA), a nonprofit community service organization established for over 25 years in Contra Costa County, California, hereby submits comments to the proceeding MB Docket No. 05-311 concerning Section 621(a) of the Cable Act.

DVA was originally founded in 1991 as 'Diablo Valley Video Arts' by way of a partnership facilitated by local cities, the local cable company, and a group of local video producers dedicated to availing low-cost and pro bono 'Community Service Video' programming services to nonprofits, community groups, neighborhood associations, youth organizations, educators, local businesses, and nongovernmental agencies. Through its training workshops and offering of resources, DVA mentored scores of new producers, fostered the development of new community-based television programs, and produced thousands of Public Service Announcements for local nonprofit organizations.

Mr. Leander, a founding member of DVA, has served on the Contra Costa County Telecom Task Force during county-wide negotiations with cable operators; and on the West Region chapter of the Alliance for Community Media. He has worked within commercial and noncommercial broadcasting for nearly three decades, including management positions for several nonprofit PEG

access operations working closely with local cities, nonprofit agencies, and educational institutions serving diverse communities across California (KSAR/KEDU at West Valley College in Santa Clara County, VCAT TV in Solano County, AMP TV in Monterey County, PCA TV in Petaluma / Sonoma County). Additionally, Mr. Leander has consulted for and assisted with the launch of numerous new noncommercial NCE and Low Power community FM radio stations across the US. With the benefit of these experiences, he offers qualified perspectives to this proceeding.

CONTEXT AND ANALYSIS:

This ill-advised proposal for rulemaking appears to fit within a pattern of a reckless 'bait and switch' trajectory that effectively precipitates an abandonment of cable's long relationship developed and grounded in local communities, which were thoughtfully codified within the Cable Act.

It is difficult to consider this proposal for rulemaking without also accounting for the larger context of eroding protections for Localism: for example, the Commission's recent summary elimination of the Main Studio Rule for broadcasters, further increases in consolidation, rollbacks of Net Neutrality, allowing Translators to overtake LPFM spectrum despite the Local Community Radio Act, and other measures regressive to Localism.

Maintaining protections for PEG can provide some mitigation of these losses while preserving vital and proactive avenues for Localism; but now, this too is threatened.

It appears this Commission has lost sight of key core values on which it was established by Congress: to ensure that telecommunications will "…serve the Public Interest, Convenience and Necessity"; which need not be mutually exclusive to maintaining continued and healthy returns for investors.

Nonetheless, in the hope that this process for Rulemaking avails a small opportunity to provide some enlightenment, we'd like to offer some perspective as to the long and mutually-beneficial relationship between cable operators and local communities.

During the earlier "blue skies" period of the 1980s and 90s when cable was deployed across the country, new competing cable operators sought to launch services which necessitated access the Public Right-of-Way, subsidized by taxpayers, and managed by the respective cities and counties in their roles as Local Franchise Authorities. As a 'value-added' offering to help get their foot in the door, the cable operators willingly availed channels, studios, and resources for use by local nonprofit public, educational, and governmental purposes.

Availing PEG channels and related spectrum allocation reserved for Institutional Networks (I-NET) for local non-commercial purposes often made the difference between competing cable operators being awarded a franchise and allowed to access the taxpayer-subsidized public right-of-way, on which cable companies made healthy profits.

This arrangement seems to have worked well for a number of years, that is, until passage the 1996 Telecom Act. Despite the promise of more competition and lower costs, the ’96 Act ended up doing the opposite: more mergers and increased consolidation, followed by a rise in costs and services imposed by the newly merged entities intent on maximizing profits, and quick to dismiss and forget the previous commitments and relationships developed with local communities.

While industry representatives of newer entrants without the benefit or appreciation of this institutional memory may occasionally complain PEG resources as frivolous and unnecessary burden, the Cable Act actually provides that Local Franchise Authorities seeking to establish PEG resources are subject to conducting a broad-based ascertainment process, specified in the Act as a Community Needs Assessment. At the end of the process the cable operator is granted a multi-year franchise agreement, and rewarded with a stable source of revenue, while costs for PEG capital needs are services are typically passed on to subscribers in the community at no burden to the operator.

The expanded technical capacity of cable systems today, of which most are operating well into Gigahertz spectrums, do easily accommodate PEG channels for nonprofit community purposes, at far less spectrum previously allocated to PEG channels on 450 MHz, 550 MHz, and 750MHz systems.

This mutually-beneficial partnership, and commitment to fulfil local community needs and interests, helped make possible for cable operators to grow their menu of services, and since returned healthy profits over the years. Studies within conducted within the past decade in California indicate that cable communities that offer PEG access channels generally enjoy a higher rate of retention and subscribership than operators that do not offer PEG access for community use. In a period where 'cord-cutting' is on the rise, it is in the best self-interests of cable operators to remain relevant and responsive to local community needs and interests.

To now propose an elimination or restructuring of PEG resources is not only an abandonment of time-honored relationships. It is also an overreach of powers already delegated to Local Franchise Authorities by statute via a heavy-handed, side-door approach to intervene and interfere with their work of negotiating with service providers proposing to use the local taxpayer-subsidized local right-of-way to exact profits for their shareholders; and at the same time, prevent LFAs to act in the best interests and address needs of their own stakeholders: the local communities.

One of the great ironies arising out of such an approach is that an agency whose leadership is appointed by persons with stated political mandates on reducing regulation at the federal level, and otherwise respects and proffers delegating certain rights of local and state authorities, would then use such an approach to leverage regulation to undermine and short-circuit those same local and state authorities.

Seen another way, the proposal effectively imposes regulation to limit the powers of local authorities within the states to govern their own affairs. This approach seems inconsistent with the stated positions of the current majority of policy makers who make appointments to the Commission.

The proposed rules in the FNPRM, if implemented, would result in the loss of billions of dollars of essential funding given to PEG stations through franchise fees which would be detrimental not only to local constituents, but more importantly, to the millions of residents of municipalities that receive PEG programming and access to its facilities.

Diablo Video Arts opposes the tentative conclusion in the FNPRM that cable-related in-kind contributions, such as those that allow PEG programming to be viewed on the cable system, are franchise fees. Furthermore, we believe it is a government overreach for the FCC to regulate how local governments determine Local Franchise fees and get payment for the use of the right of the public way. We do not believe the benefit cable operators would receive as a result of changing the way franchise fees are assessed would outweigh the harm that would be caused to communities who rely on PEG for local programming and access to its facilities.

DVA rejects the implication in the FNPRM that PEG programming is for the benefit of the local franchising authority (LFA) or a third-party PEG provider, rather than for the public or the cable consumer. As long time member of the Alliance for Community Media, we have seen the positive impact PEG providers across the nation have made on their community by increasing local programming and providing media education training to residents. PEGs also provide platforms for free speech, space for communities to organize, and serve as advocates for media access. In many communities PEG providers are the only source of local media content in a sea of homogenous, commercial, consolidated media. Without PEG, many communities would have no sources of diverse, non-commercial, community media. Yet the Commission tentatively concludes that non-capital PEG requirements should be considered franchise fees because they are, in essence, taxes imposed for the benefit of LFAs or their designated PEG providers.

By contrast, the FNPRM tentatively concludes that build-out requirements are not franchise fees because they are not contributions to the franchising authority. The FNPRM then requests comment on “other requirements besides build-out obligations that are not specifically for the use or

benefit of the LFA or an entity designated the LFA and therefore should not be considered contributions to an LFA."[1] PEG programming fits squarely into the category of benefits that do not accrue to the LFA or its designated access provider, yet the Commission concludes without any discussion of the public benefits of local programming that non-capital PEG-related provisions benefit the LFA or its designee rather than the public at large.

DVA also rejects the proposed rule in the FNPRM referenced above to "prohibit LFAs from using their video-franchising authority to regulate non-cable services offered over cable systems by incumbent cable operator." Non-cable services delivered over cables systems using public infrastructure may include broadband and Internet access services. Having classified broadband as an information service, the Commission determined that it is an unregulated service that it lacks regulatory authority over. However the Commission now proposes regulations around broadband, delivered using cities' public infrastructure, which is at odds with its own ruling around what they can regulate as a federal agency. We reject this logic and believe local municipalities should have the ability to regulate non-cable services that utilize their public rights of way.

In summary, we reject that this proposed rulemaking is anything other than an attempt to further limit cable companies' responsibilities to pay for their use of the public rights of way, as well as to undermine the spirit of the historical decisions that laid the groundwork requiring these entities to provide community access to the cable systems.

Respectfully submitted,

Clayton John Leander

Clayton John Leander
Diablo Video Arts
1480 Azalea Court
Martinez, California 94553

November 14, 2018